XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(23)

मामला क्रमांक Cr. A. No. 537/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Criminal Appeal No. 537/2001

APPELLANT Faguram, S/o Ramai Suryavanshui, aged 50 years, R/o village- Ramtala, P.S. – Koni, Distt. Bilaspur (C.G.)

Versus

RESPONDENT State of Chhattisgarh, through P.S. Koni, Distt. Bilaspur (C.G.)

D.B. : Hon'ble Shri L.C. Bhadoo and Hon'ble Shri Dhirendra Mishra, JJ.

26-6-2007

Shri Dharmesh Shrivastava, Advocate, for the appellant.

Shri Sudhir Bajpai, Panel Lawyer, for the respondent/State.

Arguments heard.

Oral judgment dictated on *Dais.*

ORAL JUDGMENT

Per L.C.Bhadoo, J. :

This appeal is directed against the judgment of conviction and order of sentence dated 25-4-2001 passed by the 7th Addl. Sessions Judge, Bilaspur in S.T. No. 298/2000, whereby the learned Additional Sessions Judge after holding accused/appellant guilty for commission of offence under Section 302 of the Indian Penal Code, sentenced him to undergo imprisonment for life.

Case of the prosecution, in brief, is that at about 10.00 a.m. Dilip (since deceased) went towards the house of Rajkumar, he left that house at about 11.30 a.m., when he reached in front of the house of Shivdayal, accused Faguram attacked him on his head with *Kudari* (pickaxe), as a result of which, Dilip fell. The incident was witnessed by Santosh Kumar, Sumendra Bai, Rajkumar and

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(24)

मामला क्रमांक G.A. No. 537/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Kedar. Santosh asked Kedar to inform the father, therefore, Kedar went to the house of Amoli and informed him. Receiving the information, Amoli came on the site, thereafter Amoli went to Police Station, Koni and reported the matter, based on which First Information Report Ex. P-1 was registered for commission of offence under Section 307 of I.P.C. Site plan Ex. P-2 was prepared by the Patwari in the instance of the witnesses. While in police custody, accused gave memorandum Ex. P-4 regarding the place where he kept the weapon of offence i.e. pickaxe, based on the information given by the accused, the pickaxe was seized under Ex. P-5. Clothes of the deceased were seized under Ex. P-6. The body of Dilip was sent for post mortem examination under Ex. P-8-A. Dr. B.R. Nanda (P.W. 6) prepared injury report Ex. P-8. Clothes of the accused stained with blood were seized under Ex. P-11. Inquest Ex. P-12 was prepared on the body of Dilip. Post mortem was conducted in the Government Hospital, Bilaspur by Dr. N.S. Chandel (P.W. 11) who prepared post mortem report Ex. P-17 and opined that death was due to multiple head injuries and death was homicidal in nature.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Bilaspur who in turn committed the case to the Sessions Judge, Bilaspur from where learned Addl. Sessions Judge received the case on transfer.

The prosecution in order to establish the charge against the accused examined 11 witnesses. Statement of accused was

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(25)

Cr.A. No. 537/01

मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

recorded under Section 313 of Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he has been falsely implicated in the crime on account of animosity. Sumendbai has deposed against him on account of animosity as there was a land dispute between them.

Learned Additional Sessions Judge after hearing the learned counsel for the respective parties, convicted and sentenced the accused as aforementioned.

We have heard Shri Dharmesh Shrivastava on behalf of the appellant and Shri Sudhir Bajpai on behalf of the State.

Shri Dharmesh Shrivastava has not disputed the homicidal death of Dilip. Moreover, P.W. 4 Sumendbai has categorically stated that the accused attacked the deceased on head with pickaxe as a result of which he sustained injuries. The above ocular evidence finds corroboration by medical evidence of P.W. 11 Dr. N.S. Chandel who has stated that he conducted post mortem on the body of Dilip on 17-5-2000 as Medical Officer. There were fractures and injuries on the head of the deceased. Maxillary bone, left parietal bone, right parietal bone and forehead bone were fractured and death was due to head injury and same was homicidal in nature. Therefore, in view of the above, it is established that the death of Deevar was homicidal in nature.

As far as involvement of the accused in the crime in question is concerned, Shri Shrivastava submits that the trial Court has convicted the accused based on evidence of P.W. 4 Sumendbai and

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(26)

Cr. A. No. 537/01

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

if her evidence is scrutinized, then it is established that she had not witnessed the crime in question because she has categorically stated that he did not come out of the house, therefore, there was no occasion for her to witness the crime. He also argued that name of Sumendbai is not mentioned in the F.I.R. He also argued that there is no F.S.L. report that any blood stain was found on the pickaxe as such, conviction of the appellant is not sustainable.

On the other hand, Shri Bajpai supported the judgment of the trial Court.

As far as first argument is concerned, we have scrutinized the evidence of P.W. 4 Sumendbai who has stated that on the fateful day at about 11.00 a.m., she came out in street in order to broom the street, she saw that the accused attacked the deceased with pickaxe. She witnessed the incident from a distance of 10 paces. After sustaining the injuries from pickaxe, Dilip fell. She raised cries and after seeing the blood of Dilip, she frightened. The accused is her elder brother-in-law and the deceased was his brother-in-law's son. In para 19 of cross-examination, she has stated that it is incorrect to say that she has not witnessed the crime. In para 9 in reply to the question of the counsel for the defence that on account of hot temperature, she did not come out, she said 'yes'. This question on which learned counsel for the appellant stressed is ambiguous in nature. It has not been clarified that whether she did not come to the site. The site plan Ex. P-2 was prepared by the Patwari at the instance of the witnesses in

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. NO. 537/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

which it is shown that Sumendbai was also present, which bears the signature and in site plan it has been shown that she witnessed the crime from Point (4) and it is shown to be at a distance of 49 ft. she has not been cross-examined on this aspect by the defence, therefore, merely reply to a question put by the defence counsel that on account of the heat, she did not come out, she said yes, it cannot be said that she did not witness the crime. In the later part of same cross-examination, she has categorically stated that she had witnessed the incident.

As far as the argument of the learned counsel for the appellant that her name is not mentioned in the F.I.R., therefore, it does not establish that the witness had, in fact, witnessed the crime in question. The F.I.R. was lodged by P.W. 1 Amoli, father of the deceased who was not present on the spot at the time of occurrence, in fact he was informed by Kedar, based on the said information he came on the scene and lodged F.I.R. As he was not a witness to the incident, therefore, if the name of Sumendbai is not mentioned by him in the F.I.R., it does not affect the evidence of this witness. P.W. 4 Sumendbai is the near relative of the accused and the deceased both, therefore, there is no occasion for her to implicate the accused in such a heinous crime without any reason. Of course, in the cross-examination she has stated that it is incorrect that there is any dispute between them regarding the land but she has stated that Faguram's land is with them and on the next question, she replied that they do not want to give the

मामला क्रमांक Cr.A.No. 5370 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

land to Faguram as Faguram has no share in the land. She has further stated that the house of Faguram is at a distance of 10 paces from the place of occurrence, therefore, this witness was consistent in her version during cross-examination that she witnessed the crime in question. There is no reason to disbelieve the evidence of this witness.

It is true that the F.S.L. report has not been produced in order to establish that any blood was found on the pickaxe. Had it been produced, it would have been additional circumstance against the accused but if the report has not been produced, the prosecution evidence cannot be disbelieved.

For the foregoing reasons, we are of the considered opinion that the trial Court has rightly believed the evidence of this witness and has reached to the conclusion that based on the evidence of P.W. 4 Sumendbai, it is established that the accused attacked the deceased with pickaxe. Perusal of most mortem report and evidence of P.W. 11 Dr. N. S. Chandel reveals that the accused had given merciless beating to the deceased with pickaxe, several attacks were made by the accused on head, as a result of which, skull bone was fractured into pieces, maxillary bone, right and left parietal bone, frontal bone and bone near the left ear were fractured and on account of excessive haemorrhage, fracture of skull bone, Dilip succumbed to the injuries, therefore, the accused has rightly been convicted for commission of murder of Dilip. We do not find any illegality or infirmity in the conviction and sentence

10.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

G.A.No. 537/01

मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	imposed upon the accused. This appeal is liable to be dismissed and it is hereby dismissed. **Sd/-** **L.C. BHADOO** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**